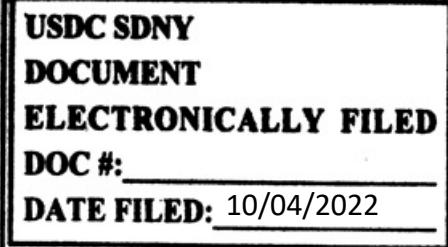


SOUTHERN DISTRICT OF NEW YORK

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BENTHOS MASTER FUND, LTD,



Petitioner,
-against-
AARON ETRA,

ORDER

20-CV-3384 (VEC) (KHP)

Respondent.
-----X

KATHARINE H. PARKER, UNITED STATES MAGISTRATE JUDGE.

On October 4, 2022, the Court received the attached correspondence from Respondent via email asking the Court to cancel the Evidentiary Hearing currently scheduled on Thursday, October 6, 2022. The Court subsequently received the attached response from the petitioner. Parties are reminded to file any correspondence with the Court via ECF. (ECF No. 146.)

The purpose of the Evidentiary Hearing scheduled on October 6, 2022 is to address the question of whether Respondent has “control” for purposes of Federal Rule of Civil Procedure 34(a), over monthly statements from two foreign bank accounts at Uni-Credit and Sberbank, over a certain time period. The Order scheduling the evidentiary hearing, which was issued on August 3, 2022 – over two months ago – directs the parties to be prepared to present witness testimony and evidence as well as argument, and specifically instructs Respondent to bring witnesses such as Mr. Helmut Allesch and clients who can provide testimony regarding the accounts in question.

Respondent asks that the Evidentiary Hearing be cancelled, because he claims that other than two documents he already provided to the Court, which he claims resolve the issue of “control,” Respondent has no further evidence to present. Respondent also notes the

Evidentiary Hearing is scheduled during the Jewish High Holiday period. Petitioner responded that it plans to present evidence at the Hearing that contradicts Respondent's evidence – including testimony from Respondent. Petitioner also notes that the Evidentiary Hearing was scheduled over two months ago, and that the date of the Hearing – October 6, 2022 – is not a Jewish Holiday on which work is prohibited.

The Court agrees with Petitioner. The Evidentiary Hearing will take place per the Court's Order at ECF No. 146 on Thursday, October 6, 2022 at 2:00 p.m. in Courtroom 17-D, United States Courthouse, 500 Pearl Street, New York, New York. Parties must attend in person and should be prepared to present evidence and argument on the issue. If Respondent has no further evidence to present, that is fine, however Respondent shall be prepared to be cross-examined by Petitioner.

The Court requests that Petitioner serve this order on Respondent via email and first class mail to his address of record.

SO ORDERED.

Dated: October 4, 2022
New York, New York

Katharine H. Parker
KATHARINE H. PARKER
United States Magistrate Judge

From: [Steven Popofsky](#)
To: [Parker NYSD Chambers](#)
Cc: [Aaron Etra](#)
Subject: RE: 20-cv-03384-VEC-KHP EVIDENTIARY HEARING 10/06/2022 2:00PM - COURTROOM 17D
Date: Tuesday, October 4, 2022 12:17:28 PM

CAUTION - EXTERNAL:

Dear Judge Parker:

The undersigned will appear as ordered on behalf of petitioner on Thursday, October 6 at 2:00 PM. We expect Mr. Etra to be present, per Your Honor's order (Dkt. 146), as we will call him to testify under cross-examination and will question him about various documents that will be introduced as exhibits.

As the Court is aware, this hearing was ordered more than two months ago. The Court ordered at that time that we serve the Order Scheduling Evidentiary Hearing on Mr. Etra "via email and first class mail" and we did so the very next day. On August 18, I discussed the hearing with Mr. Etra via e-mail (in the course of explaining why I could not grant the lengthy adjournment he requested to produce certain documents, which I explained would be used at the hearing, in response to petitioner's August 2, 2022 subpoena).

So Mr. Etra has been fully aware of this hearing since early August. If he chooses to rest on the e-mail below and its attachments, that is his choice, but petitioner is entitled to put on its case, and has prepared in reliance upon the Court's directive that "the parties must attend the conference in person. . . ."

We can expect that next, Mr. Etra will claim inability to attend Thursday due to Yom Kippur tomorrow. (See the extensive recent docket entries in which he has been bombarding Judge Caproni with extension requests due to the Jewish holidays, all of which requests Judge Caproni has denied.) Mr. Etra has had over two months to prepare for this hearing, and Yom Kippur (which I observe as well) is irrelevant. Furthermore he was of course aware of the date of the hearing, and of the dates of the Jewish holidays, and he made no request for over two months that the hearing "be cancelled" or adjourned.

This last-minute request is a typical Aaron Etra ploy ("classic Etra," to quote Judge Caproni in a related context), and it should be denied. Petitioner respectfully requests that before sundown tonight, the Court reaffirm its August 3 Order that "the parties

must attend the conference in person. . . ." Thank you.

STEVEN R. POPOFSKY

D 212.880.9882 | spopofsky@kkwc.com
F 212.986.8866 |



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From: Aaron Etra <aaronetra@gmail.com>

Sent: Tuesday, October 4, 2022 11:59 AM

To: Parker NYSD Chambers <Parker_NYSDChambers@nysd.uscourts.gov>

Cc: Steven Popofsky <SPopofsky@kkwc.com>

Subject: Re: 20-cv-03384-VEC-KHP EVIDENTIARY HEARING 10/06/2022 2:00PM - COURTROOM 17D

Dear Judge Parker,

Thank you for this notice regarding an evidentiary hearing which I am reading when I am with family observing the Jewish High Holidays and guarding my fragile health.

Please find attached the 16 July 2022 material received from Mag. Helmut Allesch, the owner and operator of these now closed European fiduciary accounts, who holds funds in his escrow accounts for clients. It took a long time and many requests to have him provide this material, understandable under well- recognized and to be respected confidentiality and privacy regulations. This signed and sealed document was finally received and provided to both Judge Caproni and Mr. Popofsky after this aspect of the Benthos matter had been referred to you.

In Mag. Allesch's letter to me, in addition to confirming his operation of the accounts, he also states that: "The clients have always been identified to me" and that "I can confirm that you have never asked me to hold any funds for, from or due to Benthos Master Capital Funds, Ltd., nor have I ever received any funds in any way associated with that party or its activities".

I believe that Mag. Allesch's letter makes the facts as clear as can be, and that there is nothing more I can provide as evidence or that needs to be said by me about the ownership or operation of the accounts and the absence of any connection to the Benthos matter. The two bank accounts, now closed as he has confirmed, were his and for his clients and he was the only one entitled to and received, or could request, all statements and communications from the banks.

Under these circumstances, I respectfully request that the hearing be cancelled and/or, if you require anything further from me, please request it and understand that I will be able to deliver it,

th

health permitting, after October 18 , the end of the High Holiday period, if not in person than virtually.

I thank Your Honor for your understanding at this time.

Respectfully submitted,

/s/Aaron Etra

Aaron Etra
240 East 47th Street-12A
New York, NY 10017
Tel. 917-856-3500
Email: aaron@etra.com

From: Parker NYSD Chambers <Parker_NYSDChambers@nysd.uscourts.gov>

Date: Monday, October 3, 2022 at 4:41 PM

To: aaron@etra.com <aaron@etra.com>, aaronetra@gmail.com <aaronetra@gmail.com>

Subject: 20-cv-03384-VEC-KHP EVIDENTIARY HEARING 10/06/2022 2:00PM - COURTROOM 17D

NOTICE TO THE PARTIES: REMINDER of the Evidentiary Hearing scheduled for Thursday, October 6, 2022, at 2:00 p.m. in Courtroom 17-D, United States Courthouse, 500 Pearl Street, New York, New York - before Judge Katharine H. Parker re: [146 Order.\(ca\)](#) (Entered: 10/03/2022)

CAUTION - EXTERNAL EMAIL: This email originated outside the Judiciary. Exercise caution when opening attachments or clicking on links.

Wirtschaftstreuhänder
Mag. Helmut ALLESCH
Steuerberater
Telefon 0463/50 6 41
Telefax 0463/50 6 41 - 20

A-9020 Klagenfurt am Wörthersee
Gabelsbergerstraße 2
DVR: 0493031
e-mail: office@allesch.at

To: Aaron Etra

Klagenfurt, 16 July 2022

Re: Fiduciary Accounts

Dear Mr. Etra,

I am a fiduciary, based in Austria, who operates fiduciary/trust accounts for clients' funds in several European countries and banking groups including those of Sperbank and Uni-Credit.

You have asked me to function for various clients of yours, for whom I have held funds in escrow in my accounts. The clients have always been identified to me and to my satisfaction.

I can confirm that you have never asked me to hold any funds for, from or due to Benthos Master Capital Fund, Ltd., nor have I ever received any funds in any way associated with that party or its activities

You have also asked me to provide monthly and closing statements for some of my accounts which I advised have been closed. I have replied that, regrettably, the only such statement I can provide is the attached one for my closed Sperbank account, which I confirm I sent to you in response to your requests.

I hope this communication is of value.

Yours Faithfully,


Wirtschaftstreuhänder
Mag. Helmut Allesch
Steuerberater
Gabelsbergerstraße 2 (Ecke St. Ruprechter Straße)
A-9020 Klagenfurt
Tel. 0463/50641 • Fax 0463/515755

Kitöltési segédlet a SEPA átutalási megbízáshoz:

Tiszttelt Ügyfelünk!

Kérjük, hogy a megbízás kitöltésénél ügyeljen a nyomtatványon szereplő mezők pontos, teljes körű kitöltésére! Ne írjon több karaktert egy mezőbe, illetve a jelzett maximális karakterek számát ne lépje túl!

Speciális utasítások: (ha eltér a normál teljesítéstől)

Egyedi árfolyammal: További információk a Bank mindenkor hatályos hirdetményében.

Név:

Számlatulajdonos neve, maximum 35 karakter hosszan.

Megbízó azonosítója:

Opcionális mező, az átutaló ügyfél egyedi azonosítója

Ügyintéző:

A számlatulajdonos, illetve meghatalmazottjának neve.

Telefon:

A számlatulajdonos, illetve meghatalmazottjának telefonszáma.

Terhelendő számla száma:

28 karakteres terhelendő számla IBAN számát.

Utalandó deviza:

A kiutalandó összeg devizaneme SEPA utalás esetén minden EUR.

A megbízás összege az átutalás devizanemében:

Ezt a mezőt abban az esetben kell kitölteni, ha az utalás összege a kiutalandó összeg devizanemében ismert. Fehívjuk szíves figyelmét, hogy a két összeg mező közül csak az egyiket kell kitölteni!

A megbízás összege a terhelendő számla devizanemében:

Ezt a mezőt abban az esetben kell kitölteni, ha az utalás összege a terhelendő / indító számla devizanemében ismert. Fehívjuk szíves figyelmét, hogy a két összeg mező közül csak az egyiket kell kitölteni!

Összeg betűvel:

Utalandó összeg szövegesen.

Tényleges fizető:

Ezt a mezőt akkor kell kitölteni, ha a számlatulajdonos neve eltér a tényleges fizető fél személyétől

Tényleges fizető azonosítója:

A tényleges fizető fél egyedi azonosítója (pl: személyi igazolvány szám, vezetői engedély szám, útlevélszám)

Kedvezményezett neve:

A maximum karakterek figyelembe vételével az átutalás végső címzettjének neve.

Partner azonosítója: a kedvezményezett egyedi azonosítója (pl: személyi igazolvány szám, vezetői engedély szám, útlevélszám)

Kedvezményezett címe:

A maximum karakterek figyelembe vételével az átutalás végső címzettjének címe.

Kedvezményezett számlaszáma:

A kedvezményezett IBAN formátumú számlaszáma.

Tényleges kedvezményezett:

Ezt a mezőt abban az esetben kell kitölteni, ha a kedvezményezett neve eltér a tényleges kedvezményezett nevétől.

Tényleges kedvezményezett azonosítója:

A tényleges kedvezményezett egyedi azonosítója (pl: személyi igazolvány szám, vezetői engedély szám, útlevélszám)

SWIFT/BIC kód:

A végső kedvezményezett bank 8 vagy 11 karakteres SWIFT-kódja, ahol a végső kedvezményezett a számláját vezeti.

Közlemény:

Kérjük, ebben a mezőben rögzítse a kedvezményezett részére szánt üzenetet, maximum 2*33 karakter hosszan. A közlemény rovat kitöltése nem kötelező!

Igazolást kérünk a teljesítésről. Fax szám/e-mail:

Kérjük, azt a fax számot/e-mail címet tüntesse fel, ahova szeretné, hogy küldjük az átutalásról kiállított igazolást. Amennyiben nem tüntet fel fax számot/e-mail címet, abban az esetben az igazolást a számlavezető fiókjába küldjük el.

Külföldi bankköltség a kedvezményezetten (SHA):

SHA költséggel megjelölt utalás esetén a fizető fél vállalja a saját bankjánál felmerülő költségeket, a kedvezményezett pénzforgalmi szolgáltatójánál felmerülő költséget a kedvezményezett viseli.

Partnerek közötti egyedi azonosító:

opcionális mező, partnerek közötti egyedi azonosító kód.

Amennyiben a kitöltési útmutatóban foglaltak mellett további információra van szüksége megbízása benyújtásához, forduljon bizalommal ügyfélreferenséhez vagy ügyintézőinkhez a +36-1-5-57-58-59-es telefonszámon!